
SUBSTITUTE SENATE BILL 6521

State of Washington

60th Legislature

2008 Regular Session

By Senate Government Operations & Elections (originally sponsored by Senators McDermott, Fairley, Swecker, Kline, and Oemig)

READ FIRST TIME 02/07/08.

1 AN ACT Relating to human remains; amending RCW 27.53.030; adding a
2 new section to chapter 68.50 RCW; adding a new section to chapter 27.44
3 RCW; adding a new section to chapter 68.60 RCW; adding a new section to
4 chapter 43.334 RCW; adding a new section to chapter 27.34 RCW; and
5 prescribing penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 68.50 RCW
8 to read as follows:

9 (1) It is the duty of every person who knows of the existence and
10 location of skeletal human remains to notify the coroner and local law
11 enforcement in the most expeditious manner possible, unless such person
12 has good reason to believe that such notice has already been given.
13 Any person knowing of the existence of skeletal human remains and not
14 having good reason to believe that the coroner and local law
15 enforcement has notice thereof and who fails to give notice to the
16 coroner and local law enforcement, is guilty of a misdemeanor.

17 (2) Any person engaged in ground disturbing activity and who
18 encounters or discovers skeletal human remains in or on the ground
19 shall:

- 1 (a) Immediately cease any activity which may cause further
2 disturbance;
- 3 (b) Make a reasonable effort to protect the area from further
4 disturbance;
- 5 (c) Report the presence and location of the remains to the coroner
6 and local law enforcement in the most expeditious manner possible; and
- 7 (d) Be held harmless from criminal and civil liability arising
8 under the provisions of this section as long as the following criteria
9 are met:
- 10 (i) The finding of the remains was based on an inadvertent
11 discovery;
- 12 (ii) The requirements of this subsection are met; and
- 13 (iii) The person is otherwise in compliance with applicable law.
- 14 (3) The coroner must make a determination of whether the skeletal
15 human remains are forensic or nonforensic within five business days of
16 receiving notification of a finding of such human remains provided that
17 there is sufficient evidence to make such a determination within that
18 time period. The coroner will retain jurisdiction over forensic
19 remains.
- 20 (a) Upon determination that the remains are nonforensic, the
21 coroner must notify the department of archaeology and historic
22 preservation within two business days. The department will have
23 jurisdiction over such remains until provenance of the remains is
24 established. A determination that remains are nonforensic does not
25 create a presumption of removal or nonremoval.
- 26 (b) Upon receiving notice from a coroner of a finding of
27 nonforensic skeletal human remains, the department must notify the
28 appropriate local cemeteries, and all affected Indian tribes via
29 certified mail to the head of the appropriate tribal government, and
30 contact the appropriate tribal cultural resources staff of affected
31 Indian tribes within two business days of the finding. The
32 determination of what are the appropriate local cemeteries to be
33 notified is at the discretion of the department. A notification to
34 tribes of a finding of such nonforensic skeletal human remains does not
35 create a presumption that the remains are Indian.
- 36 (c) The state physical anthropologist must make an initial
37 determination of whether nonforensic skeletal human remains are Indian
38 or non-Indian to the extent possible based on the remains within two

1 business days of notification of a finding of nonforensic remains. If
2 the remains are determined to be Indian, the department must notify all
3 affected Indian tribes via certified mail to the head of the
4 appropriate tribal government within two business days and contact the
5 appropriate tribal cultural resources staff of affected Indian tribes.

6 (d) The affected tribes have five business days to respond via
7 telephone or writing to the department as to their interest in the
8 remains.

9 (4) For the purposes of this section:

10 (a) "Affected tribes" are tribes with usual and accustomed areas in
11 the jurisdiction where the remains were found, or those that submit to
12 the department maps that reflect the tribe's geographical area of
13 cultural affiliation.

14 (b) "Forensic remains" are those that come under the jurisdiction
15 of the coroner pursuant to RCW 68.50.010.

16 (c) "Inadvertent discovery" has the same meaning as used in RCW
17 27.44.040.

18 NEW SECTION. **Sec. 2.** A new section is added to chapter 27.44 RCW
19 to read as follows:

20 (1) Any person who discovers skeletal human remains must notify the
21 coroner and local law enforcement in the most expeditious manner
22 possible. Any person knowing of the existence of human remains and not
23 having good reason to believe that the coroner and local law
24 enforcement has notice thereof and who fails to give notice thereof is
25 guilty of a misdemeanor.

26 (2) Any person engaged in ground disturbing activity and who
27 encounters or discovers skeletal human remains in or on the ground
28 shall:

29 (a) Immediately cease any activity which may cause further
30 disturbance;

31 (b) Make a reasonable effort to protect the area from further
32 disturbance;

33 (c) Report the presence and location of the remains to the coroner
34 and local law enforcement in the most expeditious manner possible; and

35 (d) Be held harmless from criminal and civil liability arising
36 under the provisions of this section as long as the following criteria
37 are met:

1 (i) The finding of the remains was based on an inadvertent
2 discovery;

3 (ii) The requirements of this subsection are met; and

4 (iii) The person is otherwise in compliance with applicable law.

5 (3) The coroner must make a determination whether the skeletal
6 human remains are forensic or nonforensic within five business days of
7 receiving notification of a finding of such remains provided that there
8 is sufficient evidence to make such a determination within that time
9 period. The coroner will retain jurisdiction over forensic remains.

10 (a) Upon determination that the remains are nonforensic, the
11 coroner must notify the department of archaeology and historic
12 preservation within two business days. The department will have
13 jurisdiction over such remains until provenance of the remains is
14 established. A determination that remains are nonforensic does not
15 create a presumption of removal or nonremoval.

16 (b) Upon receiving notice from a coroner of a finding of
17 nonforensic skeletal human remains, the department must notify the
18 appropriate local cemeteries, and all affected Indian tribes via
19 certified mail to the head of the appropriate tribal government, and
20 contact the appropriate tribal cultural resources staff of affected
21 Indian tribes within two business days of the finding. The
22 determination of what are the appropriate local cemeteries to be
23 notified is at the discretion of the department. A notification to
24 tribes of a finding of nonforensic skeletal human remains does not
25 create a presumption that the remains are Indian.

26 (c) The state physical anthropologist must make an initial
27 determination of whether nonforensic skeletal human remains are Indian
28 or non-Indian to the extent possible based on the remains within two
29 business days of notification of a finding of such nonforensic remains.
30 If the remains are determined to be Indian, the department must notify
31 all affected Indian tribes via certified mail to the head of the
32 appropriate tribal government within two business days and contact the
33 appropriate tribal cultural resources staff of affected Indian tribes.

34 (d) The affected tribes have five business days to respond via
35 telephone or writing to the department as to their interest in the
36 remains.

37 (4) For the purposes of this section:

1 (a) "Affected tribes" are tribes with usual and accustomed areas in
2 the jurisdiction where the remains were found, or those that submit to
3 the department maps that reflect the tribe's geographical area of
4 cultural affiliation.

5 (b) "Forensic remains" are those that come under the jurisdiction
6 of the coroner pursuant to RCW 68.50.010.

7 (c) "Inadvertent discovery" has the same meaning as used in RCW
8 27.44.040.

9 NEW SECTION. **Sec. 3.** A new section is added to chapter 68.60 RCW
10 to read as follows:

11 (1) Any person who discovers skeletal human remains shall notify
12 the coroner and local law enforcement in the most expeditious manner
13 possible. Any person knowing of the existence of skeletal human
14 remains and not having good reason to believe that the coroner and
15 local law enforcement has notice thereof and who fails to give notice
16 thereof is guilty of a misdemeanor.

17 (2) Any person engaged in ground disturbing activity and who
18 encounters or discovers skeletal human remains in or on the ground
19 shall:

20 (a) Immediately cease any activity which may cause further
21 disturbance;

22 (b) Make a reasonable effort to protect the area from further
23 disturbance;

24 (c) Report the presence and location of the remains to the coroner
25 and local law enforcement in the most expeditious manner possible; and

26 (d) Be held harmless from criminal and civil liability arising
27 under the provisions of this section as long as the following criteria
28 are met:

29 (i) The finding of the remains was based on an inadvertent
30 discovery;

31 (ii) The requirements of this subsection are met; and

32 (iii) The person is otherwise in compliance with applicable law.

33 (3) The coroner must make a determination whether the skeletal
34 human remains are forensic or nonforensic within five business days of
35 receiving notification of a finding of such remains provided that there
36 is sufficient evidence to make such a determination within that time
37 period. The coroner will retain jurisdiction over forensic remains.

1 (a) Upon determination that the remains are nonforensic, the
2 coroner must notify the department of archaeology and historic
3 preservation within two business days. The department will have
4 jurisdiction over such remains until provenance of the remains is
5 established. A determination that remains are nonforensic does not
6 create a presumption of removal or nonremoval.

7 (b) Upon receiving notice from a coroner of a finding of
8 nonforensic skeletal human remains, the department must notify the
9 appropriate local cemeteries, and all affected Indian tribes via
10 certified mail to the head of the appropriate tribal government, and
11 contact the appropriate tribal cultural resources staff of affected
12 Indian tribes within two business days of the finding. The
13 determination of what are the appropriate local cemeteries to be
14 notified is at the discretion of the department. A notification to
15 tribes of a finding of such nonforensic skeletal human remains does not
16 create a presumption that the remains are Indian.

17 (c) The state physical anthropologist must make an initial
18 determination of whether nonforensic skeletal human remains are Indian
19 or non-Indian to the extent possible based on the remains within two
20 business days of notification of a finding of such nonforensic remains.
21 If the remains are determined to be Indian, the department must notify
22 all affected Indian tribes via certified mail to the head of the
23 appropriate tribal government within two business days and contact the
24 appropriate tribal cultural resources staff of affected Indian tribes.

25 (d) The affected tribes have five business days to respond via
26 telephone or writing to the department as to their interest in the
27 remains.

28 (4) For the purposes of this section:

29 (a) "Affected tribes" are tribes with usual and accustomed areas in
30 the jurisdiction where the remains were found, or those that submit to
31 the department maps that reflect the tribe's geographical area of
32 cultural affiliation.

33 (b) "Forensic remains" are those that come under the jurisdiction
34 of the coroner pursuant to RCW 68.50.010.

35 (c) "Inadvertent discovery" has the same meaning as used in RCW
36 27.44.040.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.334 RCW
2 to read as follows:

3 (1) The director shall appoint a state physical anthropologist. At
4 a minimum, the state physical anthropologist must have a doctorate in
5 either archaeology or anthropology and have experience in forensic
6 osteology or other relevant aspects of physical anthropology and must
7 have at least one year of experience in laboratory reconstruction and
8 analysis. A medical degree with archaeological experience in addition
9 to the experience required may substitute for a doctorate in
10 archaeology or anthropology.

11 (2) The state physical anthropologist has the primary
12 responsibility of investigating, preserving, and, when necessary,
13 removing and reintering discoveries of nonforensic skeletal human
14 remains. The state physical anthropologist is available to any local
15 governments or any federally recognized tribal government within the
16 boundaries of Washington to assist in determining whether discovered
17 skeletal human remains are forensic or nonforensic.

18 (3) The director shall hire staff as necessary to support the state
19 physical anthropologist to meet the objectives of this section.

20 (4) For the purposes of this section, "forensic remains" are those
21 that come under the jurisdiction of the coroner pursuant to RCW
22 68.50.010.

23 **Sec. 5.** RCW 27.53.030 and 2005 c 333 s 20 are each amended to read
24 as follows:

25 The definitions in this section apply throughout this chapter
26 unless the context clearly requires otherwise.

27 (1) "Archaeology" means systematic, scientific study of man's past
28 through material remains.

29 (2) "Archaeological object" means an object that comprises the
30 physical evidence of an indigenous and subsequent culture including
31 material remains of past human life including monuments, symbols,
32 tools, facilities, and technological by-products.

33 (3) "Archaeological site" means a geographic locality in
34 Washington, including but not limited to, submerged and submersible
35 lands and the bed of the sea within the state's jurisdiction, that
36 contains archaeological objects.

1 (4) "Department" means the department of archaeology and historic
2 preservation, created in chapter 43.334 RCW.

3 (5) "Director" means the director of the department of archaeology
4 and historic preservation, created in chapter 43.334 RCW.

5 (6) "Historic" means peoples and cultures who are known through
6 written documents in their own or other languages. As applied to
7 underwater archaeological resources, the term historic shall include
8 only those properties which are listed in or eligible for listing in
9 the Washington State Register of Historic Places (RCW 27.34.220) or the
10 National Register of Historic Places as defined in the National
11 Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-
12 665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

13 (7) "Prehistoric" means peoples and cultures who are unknown
14 through contemporaneous written documents in any language.

15 (8) "Professional archaeologist" means a person (~~(who has met the~~
16 ~~educational, training, and experience requirements of the society of~~
17 ~~professional archaeologists.~~

18 ~~(9) "Qualified archaeologist" means a person who has had formal~~
19 ~~training and/or experience in archaeology over a period of at least~~
20 ~~three years, and has been certified in writing to be a qualified~~
21 ~~archaeologist by two professional archaeologists)) with qualifications~~
22 ~~meeting the federal secretary of the interior's standards for a~~
23 ~~professional archaeologist. Archaeologists not meeting this standard~~
24 ~~may be conditionally employed by working under the supervision of a~~
25 ~~professional archaeologist for a period of four years provided the~~
26 ~~employee is pursuing qualifications necessary to meet the federal~~
27 ~~secretary of the interior's standards for a professional archaeologist.~~
28 ~~During this four-year period, the professional archaeologist is~~
29 ~~responsible for all findings. The four-year period is not subject to~~
30 ~~renewal.~~

31 ~~((+10+))~~ (9) "Amateur society" means any organization composed
32 primarily of persons who are not professional archaeologists, whose
33 primary interest is in the archaeological resources of the state, and
34 which has been certified in writing by two professional archaeologists.

35 ~~((+11+))~~ (10) "Historic archaeological resources" means those
36 properties which are listed in or eligible for listing in the
37 Washington State Register of Historic Places (RCW 27.34.220) or the

1 National Register of Historic Places as defined in the National
2 Historic Preservation Act of 1966 (Title 1, Sec. 101, Public Law 89-
3 665; 80 Stat. 915; 16 U.S.C. Sec. 470) as now or hereafter amended.

4 NEW SECTION. **Sec. 6.** A new section is added to chapter 27.34 RCW
5 to read as follows:

6 The department of archaeology and historic preservation shall
7 develop and maintain a centralized database and geographic information
8 systems spatial layer of all known cemeteries and known sites of
9 burials of human remains in Washington state. The information in the
10 database is subject to public disclosure, except as provided in RCW
11 42.56.300; exempt information is available by confidentiality agreement
12 to federal, state, and local agencies for purposes of environmental
13 review, and to tribes in order to participate in environmental review,
14 protect their ancestors, and perpetuate their cultures.

15 Information provided to state and local agencies under this section
16 is subject to public disclosure, except as provided in RCW 42.56.300.

--- END ---